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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

August 21, 1997

**VIA HAND-DELIVERY**

William Kennard, Esquire  
General Counsel  
Federal Communications Commission  
Room 614, Mail Stop 1400  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: James A. Kay, Jr., WT Docket No. 94-147

Dear Mr. Kennard:

This firm is counsel for James A. Kay, Jr. ("Kay") in the above-captioned matter. Kay has pending before the Commission an Appeal of Order Denying Motion to Disqualify. See Memorandum Opinion and Order, FCC 97M-52, released April 14, 1997 (denying Kay's Motion to Disqualify the Presiding Officer). As you may be aware, one of several reasons Kay sought to disqualify the Presiding Officer was a possible illegal *ex parte* contact. A brief review of the facts underlying this claim is necessary.

In connection with pending California litigation, Mr. Robert Andary, the former Inspector General at the FCC, through his attorneys at the Department of Justice, produced a July, 1995 letter from Annedore Pick addressed to the Presiding Officer (the "Pick Letter"). A copy of a July 14, 1995 letter from Gerard Pick to Regina M. Keeney and a copy of July 7, 1995 letter from Gerard Pick to the Sheriff of Los Angeles County (Internal Affairs Bureau) were also attached to the Pick Letter. A copy of the Pick Letter, with enclosures, is attached hereto as Exhibit "A". The Pick Letter apparently was sent, and received, in violation of the FCC's *ex parte* rules (47 C.F.R. § 1.1200, *et. seq.*) since, prior to the Justice Department's production of the Pick Letter on August 30, 1996, neither Kay nor his counsel had received the Pick Letter.

Kay has taken several steps to determine if the Presiding Officer actually received and/or reviewed the Pick Letter, including the filing of a Freedom of Information request. To date, however, his efforts have been vigorously opposed by the Commission and others. Under these circumstances, we request that the Commission conduct an investigation and determine whether there was a violation of the Commission's *ex parte* rules. We further request that if it is determined that the *ex parte* rules were violated, that appropriate sanctions be issued pursuant to the provisions of Section 1.1216 of the Commission's Rules.

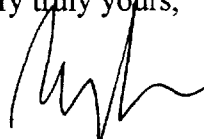
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General Counsel  
Federal Communications Commission  
August 21, 1997  
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Thank you for your assistance. Please do not hesitate to call me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Barry A. Friedman', written over the closing 'yours,'.

Barry A. Friedman

Enclosure

cc: James A. Kay, Jr. (w/enclosure)  
Gary P. Schonman, Esquire (w/enclosure)  
W. Riley Hollingsworth, Esquire (w/enclosure)

GERARD PICK

6-SP(sipple)

THE HON. L. RJ  
Administrative  
Federal Commur  
1270 Fairfield  
Gettysburg, PA

Dear Bob

Your Honor -

my husband passed away, he tried  
desperately to save us, but I am at the  
end of the line. Kay is still saving us.

There seems to be a convention that you don't write to a Judge.  
There is also a convention that if you are about to drown you  
grab at any straw.

Please, your Honor, read the enclosed. I know it sounds as if  
I dramatize myself and my situation; nevertheless my family and  
I are being systematically destroyed because we brought some im-  
possible facts to the attention of the FCC. And the FCC is hurt  
in the process.

It is the Kay case which is before you. And it radiates to the  
monopolistic case/investigation before Judge Hogan in the United  
States District Court for the District of Columbia. Please read  
the papers attached hereto.

Respectfully -

*Gerard Pick*  
Gerard Pick

/ac

Ms. Regina M. Keeney  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
1919 M Street N.W.  
Washington, D.C.

202/632-7000

14 July 1995

Dear Ms. Keeney -

About a year and a half ago, my son (Harold) and I decided that James Kay had like a dangerous animal roamed the area in which we together with many other honest businessmen hewed a worthy livelihood and that he had done so long enough. To his harmful efforts need be added the damage he has attempted to inflict on large enterprises and the maleficence done to the Federal Communication Commission.

We compiled a detailed statement on our findings; we had them verified and then took the piece to Representative Henry Waxman. He took it to Commissioner James H. Quello - the rest is history.

The Order to Show Cause, adopted December 9, 1994 and released December 13, 1994, In the Matter of James A. Kay, Jr., cites just about every point, every fact, every malevolence that we had carefully presented in our submission. In other words the Commission built its entire case against the multiple transgressions of Kay on the information we had supplied.

We and every decent individual that had been plagued by Kay to the very limit now sees this "Memorandum of Understanding". Anyone who knows the German poet Goethe will surely think of "vainly you speak so many words, the other only hears the No!"\* "No your cooperation with the FCC has been forgotten. Long Live Kay!

There was a time when crime did pay. Francois Villon after a career of murder was appointed Police President of Paris. He then wrote a number of beautiful poems, e.g. I'll take the stars from the firmament and string them up on silken bands as a necklace just for you. Fine for the 17th Century. Crime did NOT pay for Milken; it should not have. Why then for Kay? The Memo is a slap in the face of the American people and a kick in the back of us who run the service for Mobiles. Kay esse delendam (with a bow to the Roman Senator Cato). The Memo should NOT be consumated.

A somewhat similar/related case is presently heard in the U.S. District Court for the District of Columbia] (United States of America, Plaintiff v. MOTOROLA INC. and NEXTEL COMMUNICATIONS, Defendants) before the Hon. Thomas F. Hogan. The offense is monopolistic practices. The Court issued a request to a number of organizations in the Mobile business, ranging from General Electric to Century Communication Service (yours truly), to submit opinions on a proposed "Memorandum". The information I have at this time indicates that all respondents object strongly to Motorola/NEXTEL setting up a monopoly; there is also objection to the somewhat conciliatory tenor of the "Memo".

The foregoing is principally a descriptions of how the people in the Mobile business feel; I think you have had confirmation of my feeling from many others.

I now take the liberty of addressing a more personal matter which is closely related to the general topic of this missive.

Shortly after our original report had been taken to Mr. Quello by Representative Waxman Motorola sued us for copyright violation as well as for other similar heinous crimes. There is not much to say about this anymore because Motorola and we have arrived at a settlement which is not as good as Motorola or I had wanted it to be but it is surely better than either of us could have obtained via Court, Judge and Jury. At least we are both friends again. Among my friends and business acquaintances there is not a single one who believed that I could fight Motorola and not be squashed.

Nevertheless I am coming very close being squashed, not by mighty Motorola but by my own stupidity helped along by the FCC.

Next, this symbol of morality, Kay, sued my son and me for af all things slander; after reading the original Order to Show Cause it would hardly be possible to do so. He has been investigated for the murder of a former secretary but he has not been convicted; neither my son nor I are dumb enough to accuse him of murder. Yet he liked to go around telling everybody that "me and Motorola is in cahoots". Kay's suit does follow a pattern: many of those he had sued did not have the money to sustain his attacks.

We now had two suits going and the financial strain was hardly tolerable. My then lawyer suggested that we go into bankruptcy. I had no experience with that; I do not even know a single person who has declared bankruptcy. However since neither my wife, nor my son nor I owed (owe!) anybody a single penny, bankruptcy seemed to me to be totally immoral. However my wife and my son feared the constant attacks with reams of paper by the lawyers and the costs and practically begged me to try this bankruptcy deal which they knew no better than I did; the lawyer had promised that the paper attacks would stop.

My son signed and so did I, but neither paid any attention to the forms to be filled in; we signed what the lawyer gave us. (In situations like this my mother used to say "if stupidity would hurt, you would be screaming!") I had no idea that the lawyer had "signed us up" for Chapter 7 'though at the time it would have been meaningless to me.

Within a few days I began to understand the mistake I had made; when I was called for a creditors' meeting I did not attend. A letter from the Trustee informed me that if I do not attend the second meeting my application would be dismissed. I wrote that trustee 4 times and called him 6 times to tell him that I want the "thing" dismissed; he never returned my calls nor replied to my letters. But from the note signed by the Trustee I assumed that I am out of bankruptcy.

I had assumed wrongly; the Trustee had no desire (as I found out quite a bit later) to release me from the bankruptcy application because of the commission he could make from the sale of my house which he and his lawyer had already planned! (Do you by chance remember the picture of a little black girl sitting in a field dieing from starvation with a vulture sitting behind her waiting for her to topple over.) I took the matter to Court (some more expense); the bankruptcy was dismissed by the Chief Judge of the Bankruptcy Court. I was my own master again.

So I thought. My son was still in bankruptcy and the Trustee and his lawyer would not let him have the case dismissed. They had figured out a way how to get our property 'though Harold had no debts of any kind. They succeeded in putting their hands on our equipment (which was bought by my wife and me!) and the licenses.

These activities by the Trustee and his lawyer have already had most unfortunate results. One, our physician discovered that my had wife suffered a heart attack (See the 4th paragraph on page 4 of the attached Report. I will furnish our physician's name and 'phone number upon request.)

Two, please peruse the full Report (attached) I submitted to the Internal Affairs Bureau, The Los Angeles County Sheriff. Your attention is specifically directed to the last paragraph on page 4.

Three, the Trustee and his lawyer are trying to rob us of our FCC licenses. Please refer to pages 2 and 3 of our Report to the Internal Affairs Bureau.

As of this moment the licenses are blocked but the Trustee and his lawyer want to sell them to Kay; the Trustee claims he has the right to do so because under the Bankruptcy Law/Chapter 7 whatever was my son's is now his (the Trustee). I submit this reasoning to be falacious; first of all in view of recent FCC rulings Kay canNOT buy any licenses. Secondly, the licenses are mine, not my son's.

The Trustee/lawyer claim that my son and I are partners in the business (which is NOT true); therefore what is mine is his, a clever adaptation of an old joke: in Communism what is yours is mine and what is mine is none of your business.

According to FCC rules and laws, licenses cannot be transfered like merchandise; among other features prospective licensees must be qualified to hold a license. FCC licenses (like all others) cannot be bought and sold, and can be transfered only with FCC approval.


In addition, there is another rather important precedent. In 1946 the Governments of the US, UK, USSR and France agreed that any act enumerated as a crime by the Nuremberg Tribunal would become part of their Penal Codes.

One of these relatively new laws is that escape from punishment for a criminal act is not possible by declaring "I was told to do so" or "the law said so" or "it is not forbidden under the law". An individual entrusted with command and similar decisions must be aware of and follow the moral codes of the civilized world.

The Judge\* who authorized the sale of my licenses declared in open Court that she is not bound by FCC rules and regulations which is in total violation of the conditions described in the two previous paragraphs. To cite the Nuremberg Tribunal in the matter at hand may appear to be a bit far-fetched but then "you hit me with the law I hit back with it".

There is yet another aspect to this dispatch. Our business' name is CENTURY COMMUNICATION SERVICE, previously Communication Consultants and Systems. It is obvious why we use CCS, especially when answering the 'phone. My son who is a fine engineer and excellent technician filled in our license applications as "Harold Pick DBA CCS ..." etc. That according to that Judge makes him my partner. The facts are [1] that he is listed as the Control Point for/on our licenses; when technical questions come in he takes care of them thus simplifying my job; [2] there is no DBA under the name of Harold Pick anywhere in California, probably not anywhere in the entire US. Nevertheless it was injudicious to use the DBA letters in this connection. And for that my wife, my son and I deserve to be punished by total destruction? In America in whose army I served (up front)? In 1938 Nazi troopers stole everything my parents owned, threw them out of their apartment in which they had lived for about 25 years and left them homeless and destitute. They had every "right" to do so, after all my mother was Jewish.

I need your help. Do NOT make crime pay, not for that gentleman





-6/SP=INT-AFF

# CENTURY COMMUNICATION SERVICE

P.O. BOX 3032

SANTA MONICA, CALIFORNIA 90408

\*Phones> Office: 310/454-9561 FAX: 310/459-2655

THE INTERNAL AFFAIRS BUREAU  
The Sheriff of Los Angeles County  
4900 S Eastern Avenue Suite 100  
Commerce, CA 90040

213/890-5300

THE FOLLOWING IS RESPECTFULLY SUBMITTED TO THE SHERIFF'S

INTERNAL AFFAIRS BUREAU

- 1: I am the owner of a small two-way radio sales, repair and service business. The office is located in Santa Monica, the shop in the LAX area. Repeater stations are on Saddle Peak Mountain, Mount Lukens and Oat Mountain.
- 2: My son (Harold) assists me, specifically in the technical phases; he does however not have a financial interest in the business.
- 3: In August 1994 our then attorney filed Voluntary Bankruptcy (Chapter 7) for my son and a month later for me. Of the mistakes I ever made in my life this bankruptcy filing was the biggest.
- 4: The Trustee assigned to my case had assured me that if I do not show up at two meetings, the case would be dismissed. But I found that the Trustee did everything in his power to keep me in bankruptcy. It took me some time to understand why of all people the Trustee would want me to remain in bankruptcy; I had no debts whatever, even my cars were all paid and the mortgage on my house had over the years decreased to a very small amount. But the house as part of my property if sold by the Trustee would realize for him a sizable commission.
- 5: I realized the error very quickly and after a lot of unusual and costly efforts succeeded in having the bankruptcy dismissed.

# CENTURY COMMUNICATION SERVICE

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INTERNAL AFFAIRS BUREAU

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6: Still there was my son's bankruptcy. Why our former attorney ever suggested that Harold should apply for bankruptcy is totally inexplicable; Harold has no debts whatsoever. But he did and it is now exceedingly difficult to pull Harold from "voluntary bankruptcy". The trustee's lawyer has filed as of this date over 50 briefs with the Court objecting to Harold's bankruptcy being dismissed. That second Judge decided that what had been considered by all my property, naturally including the first Judge who had dismissed my ill-chosen bankruptcy and thus restored my property to me, is now Harold's.

7: With that decision the Trustee went after the business thus attempting to destroy us completely. My equipment was sold to a man who is being charged by the Federal Communication Commission as not being fit to operate under/with FCC licenses. The Judge has tried to grant this person, in addition to my equipment, our licenses though he is forbidden by Law and FCC Rules now to own such. [Licenses and equipment go together. Without equipment the licenses cannot be used; without licenses it is illegal to operate the equipment!]

8: My son took the equipment that had been listed in the "sales order" to the Trustee's lawyer; he should not have done so without my express permission because I had filed an Appeal against the Judge's decision which stayed its execution and requested the FCC to place our licenses on hold which was done.

9: At this point it is imperative to cite the following FCC rule under which every holder of an FCC licenses must operate.

The Licensee(s) have to see to it that the facilities are OPEN and READY AT ALL TIMES to serve the public need - viz Code of Federal Regulations - Telecommunications - Rule § 90.403 General Operating Requirements

# CENTURY COMMUNICATION SERVICE

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INTERNAL AFFAIRS BUREAU

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(a) LICENSEES OF RADIO STATIONS IN THE PRIVATE LAND MOBILE RADIO SHALL BE DIRECTLY RESPONSIBLE FOR THE PROPER OPERATION AND USE OF EACH TRANSMITTER FOR WHICH THEY ARE LICENSED. IN THIS CONNECTION, LICENSES SHALL EXERCISE SUCH DIRECTION AND CONTROL AS IS NECESSARY TO ASSURE THAT ALL AUTHORIZED FACILITIES ARE EMPLOYED:

- (1) only for permissible purposes;
- (2) only in a permissible manner, and
- (3) ONLY BY PERSONS WITH AUTHORITY TO USE AND OPERATE SUCH EQUIPMENT.

THE ONLY PERSONS PERMITTED TO USE THE EQUIPMENT ARE MY SON AND I. BY "ORDER" OF JUDGE FENNING AND THE BREAK-IN INTO OUR FACILITY - QUASI-AUTHORIZED BY THE JUDGE'S ORDER - WE WERE PREVENTED BY RAW FORCE TO ATTEND TO OUR DUTY!

10: On 15 June 1995 at approximately 1500 hours my son called to inform me that something has gone awry with the repeaters (transmitters) on Saddle Peak, that I should go and see what happened and that he will join me within the hour.

11: When I arrived on Saddle Peak, accompanied by my wife, I found two men inside the building in which I have rented space for the repeaters. The gate was locked. They were "working" at my equipment. They refused to identify themselves; one claimed to be (first) a sheriff, then a police officer. At 83 years of age I found it impossible to vault the fence but my wife did and stopped the on-going dismantling of equipment. The dark-haired man threatened my wife. He retreated when I said that I would drive my car through the fence.

12: Within about half-an-hour my son arrived with our technician; since I have leased space in the building my son could open the gate with the key.

13: My son knew the dark-haired man to be one Will Martin, but before we could really find out what the men were doing in that building and why they had their hands on our equipment the Police arrived.

# CENTURY COMMUNICATION SERVICE

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INTERNAL AFFAIRS BUREAU

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14: And thus my wife and I who had both lived for several years under the NAZI government felt as if we were back in Nazi Germany. The "leader" of the Police Force, one Knudsen, reminded me very much of a German soldier I had interviewed as a member of the USA Military Intelligence Corps during the Battle of Bulge. A clean-cut young man 'til he showed off his billfold made from human skin.

This policeman or sheriff arrested all of us, my wife, my son, our technician and me without a single explanation, without answering a single question - but when I asked him why does he not as much listen to us he told one of his men "the old man pisses me off".

He forced handcuffs on us, on my son and our technician friend (who is 60 years old), on my wife (almost 70) and me (83). When my son told him, risking his life doing so, that I had just been released from the hospital with a very bad heart and that because of his mother's age and her present severe chest pain, and of his friend's need of medication, an ambulance should be called, that clean-cut American policeman, who looks so much and acts so much like a German soldier who carries his papers in a valet made of human skin, grandly declared that "we don't need an ambulance". My son was also not permitted to retrieve some medicine from our car. I always have with me a few nitro-glycerine pills but with my hands behind my back I could not get the little bottle out of my pocket; Knudsen would not permit the shackles to be removed.

Our physician whom we naturally consulted upon this nightmarish episode, established that my wife had suffered a heart attack because of the stress to which she had been exposed.

We were treated, talked to and ordered around like a bunch of wild criminals, we were not allowed to talk to each other, we were kept waiting and waiting for what we did not know and nothing was ever explained to us.

The most dangerous moment came when Officer Knudsen threatened to shoot our German shepard whom my wife held tightly on the leach. Had he done so our friend and I would have jumped him with our hands behind our backs; he may then have fired his gun.

# CENTURY COMMUNICATION SERVICE

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INTERNAL AFFAIRS BUREAU

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We were put into holding cells; my wife and I into two different ones! We had no idea where my son and our friend were, we were even refused any information about them.

Our cars were taken and nothing we had in there was given to us, not my wife's pocket book, nor keys and driver's licenses.

We found later when the cars had been finally released to us that everything had been removed - all our equipment, including much that had absolutely nothing to do with the matter at hand (some even belonged to others!), and e.g. a jacket belonging to my wife with a medallion identifying her as an employee of the Santa Monica Police Department.

We were interviewed by a Sergeant Baker who was at least polite. But if my comrades in WorldWar II and I had interviewed German soldier as she did us, General Eisenhower's endeavors would have come to rest on the Channel's bottom.

My wife and I were let go after mid-night. We were not permitted to get our keys etc. out of the cars which were taken from us.

My son and our friend were let go two days later, required however to appear for arraignment.

When we attempted to file a Police Report about the equipment et al. stolen from us at the Lost Hill Police Station the officer in charge refused to accept our report! We therefore sent it to our

The following event/happenings have become clear.

The entire episode was unnecessary. If a man instead of a 6'2" long boy would have come to see what "gives on the mountain" no problems would have arisen. Two major flaws caused a terrible shock to undeserving, honorable citizens: one is that the Police force lacked knowledge of the area 'though their Headquarters are housed there; two, the Policemen went out "on a lark" which may develop into a very costly affair.

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The idea of how to make trouble was quite obviously hatched by Officer Knudsen and a friend of his by the name of Kay; from their laughing conversation with each other and Martin and that other man it was obvious that they felt well entertained. My attorney will take care of Kay and Martin.

It is rather questionable whether Police or Sheriff should indulge in such possibly dangerous games with peoples' lives.

If the police would have had any knowledge of the area in which they operated, as they should have, they would have known that the top of Saddle Peak is private property. We are leasing two parcels and space in two buildings. We have contractual rights to be on Saddle Peak and to enter the buildings (with keys provided by the owners) in which we have rented space.

The Police broke the peace by entering the buildings. The Police badly mishandled us in the way they acted and treated us. And by threatening the buildings' owners they did not do them any favors!


As a Combat Veteran I specifically resent the treatment meted out to me by these ill-behaved rowdies.

The Police and/or Sheriff troops behaved like the most miserable Nazis. They are obviously not as cruel as concentration camp guards yet but their attitude shows that they are not very far from accomplishing what the Nazi guards did given half a chance.

The oh-so-clean-cut officer Knudsen is by far the worst example of a policeman that I have encountered ever since I left Germany. If that is the type of American I fought and risked my life for in WW II, then my age will stand me in good stead for I will be dead before this type of person will have the power with which he now plays but to which he obviously aspires.

Finally we had filed an appeal in re: this "sales order" thereby having the order stayed driving whole episode ad absurdum.

I REQUEST THAT THE INTERNAL AFFAIRS DIVISION INVESTIGATE THIS CASE AND IF IT IS FOUND THAT MY PORTRAYL OF MATTERS IS CORRECT THAT KNUDSEN WILL BE SEPARATED FROM THE FORCE AND THE OTHER TWO GIVEN A WARNING.

  
Gerard Pick  
07/07/95